International Brotherhood of Electrical Workers, Local Union No. 98 *and* Lucent Technologies and Communications Workers of America, AFL–CIO.[1] Case 4–CD–1032

April 30, 2003

DECISION AND DETERMINATION OF DISPUTE

BY MEMBERS SCHAUMBER, WALSH, AND ACOSTA

This is a jurisdictional dispute proceeding under Section 10(k) of the National Labor Relations Act (the Act). The charge in this Section 10(k) proceeding was filed on June 14, 2000, by Lucent Technologies, Inc. (the Employer) alleging that the Respondent, International Brotherhood of Electrical Workers, Local Union No. 98 (Local 98), violated Section 8(b)(4)(D) of the Act by engaging in proscribed activity with an object of forcing the Employer to assign certain work to employees Local 98 represents rather than to the Employer's own employees who are represented by the Intervenor, Communications Workers of America, AFL–CIO (CWA). The hearing was held on December 14 and 28, 2000, before hearing officer Donna D. Brown.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board affirms the hearing officer's rulings, finding them free from prejudicial error. On the entire record, the Board makes the following findings.

I. JURISDICTION

The Employer and CWA stipulated that the Employer, a New Jersey corporation, is engaged in the business of installing telecommunications equipment, and that during the 12-month period preceding the hearing the Employer purchased and received goods valued in excess of $50,000 directly from points located outside the State of New Jersey, and received gross revenues in excess of $500,000.[2] Based on record testimony, the Board finds that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act. All parties stipulated that Local 98 and CWA are labor organizations within the meaning of Section 2(5) of the Act.

[1] At the hearing, the name of the Intervenor as it appeared on the notice of hearing was amended by deleting the term "District 13."

[2] The attorney for Local 98 was not present on the first day of the hearing when the Employer and CWA entered into this stipulation. On the second day of the hearing, the attorney for Local 98 stipulated that the Employer was an employer engaged in commerce within the meaning of the Act.

II. THE DISPUTE

A. Background

The Employer has a contract with Sprint Communications (Sprint) to install PCS CDMA minicell equipment for Sprint's customers.[3] Sprint purchases the minicell equipment from the Employer. During the summer of 2000,[4] the Employer was scheduled to install minicell equipment at a Sprint project at the First Union Center, a large convention hall in Philadelphia, Pennsylvania. The Employer assigned the minicell installation work to its communication equipment installers who are represented by CWA. The Employer was scheduled to begin the disputed work on June 14. At all material times, the Employer and CWA have been parties to a collective-bargaining agreement covering the Employer's installers.

Sprint hired Specialty Constructors as the general contractor on the First Union Project. Specialty subcontracted the electrical work to Adams Electric which employed members of Local 98. Sprint was not aware of the agreement between Specialty and Adams. The Employer does not have a contract with Local 98.

On June 9, when the minicell equipment was delivered to the jobsite, the Employer's installers were there to move it from the dock to the room where it would be installed. However, their supervisor instructed them not to move it. Instead, Adams Electric employees represented by Local 98 moved the equipment. After the equipment had been moved, the Employer's installers noticed that someone had written "Lucent scabs" and other derogatory comments on several of the boxes. Thereafter, Joseph Rowland, an electrician employed by Adams Electric and Local 98's job steward at the First Union Center jobsite,[5] asked to see the Employer's installers' union cards or proof that they were paying union dues. Rowland advised the Employer's installers that the First Union Center had promised the disputed work to Local 98. The Employer's installers secured the equipment and left the jobsite.

The record establishes that on June 13, CWA representative Bruce Davis met with both First Union Center Building Manager Arthur Chu and with Local 98 Business Agent Larry DelSpechio. At some point during this meeting, DelSpechio stated that Local 98 had been told that Local 98 would be assigned all the cabling work at the First Union Center. DelSpechio rejected Davis' suggestion that CWA and Local 98 share the disputed work.

[3] At the hearing, "CMDA" set out in the notice of hearing was amended to read "CDMA."

[4] All dates are in 2000 unless otherwise stated.

[5] Rowland testified that as job steward his primary responsibility was to protect the jurisdiction of Local 98. (Tr. 93.)

Davis testified that DelSpechio stated that Local 98 would put up a picket line if the Employer proceeded to install the minicells. DelSpechio denied that he made such a statement.

Thereafter, Chu advised Sprint that because of Local 98's contract with the First Union Center, Local 98 would have to perform the disputed work. As a result, Sprint hired an outside contractor to come in and instruct the Local 98-represented electricians on how to install the Sprint equipment.[6] After the Local 98-represented electricians completed the installations, the Employer's installers were assigned to perform the integration work.[7] The work in dispute was completed by June 16. However, the Employer will continue to perform minicell installations for various customers in the Philadelphia area.

B. Work In Dispute

The disputed work consists of the installation of PCS CDMA minicell equipment and related wiring by Lucent Technologies, Inc., wherever the geographical jurisdiction of International Brotherhood of Electrical Workers, Local Union No. 98 and Communications Workers of America, AFL–CIO, coincide.

C. Contentions of the Parties

The Employer and CWA contend that there is reasonable cause to believe that Local 98 violated Section 8(b)(4)(D) of the Act. The Employer and CWA also contend that the work in dispute should be assigned to the Employer's employees represented by CWA based on collective-bargaining agreements, employer preference and past practice, area practice, relative skills, and economy and efficiency of operations. The Employer and CWA further contend that Local 98 has a proclivity to violate the Act, and that therefore the Board should enter a broad order that is coextensive with Local 98's geographical jurisdiction. In support, the Employer and CWA cite to the Board's decisions in *Electrical Workers Local 98 (Lucent Technologies)*, 324 NLRB 226 (1997), and *Electrical Workers Local 98 (Lucent Technologies)*, 324 NLRB 230 (1997), other 10(k) proceedings that involved the same parties (i.e., Lucent, CWA, and Local 98), in which the Board issued broad orders against Local 98. Finally, CWA contends that the Board should award to employees represented by CWA all disputed work where the geographical jurisdiction of CWA and Local 98 overlap "and all similar work in that area of geographical overlap, whether Lucent be the employer or some other entity."

Local 98 contends that the Board lacks jurisdiction under Section 10(k) to hear this matter and that it should therefore quash the notice of hearing. Local 98 asserts that the record does not support a conclusion that reasonable grounds exist to believe that Local 98 violated Section 8(b)(4)(D) because there is no credible evidence that Local 98 ever threatened to picket the First Union Center jobsite if Local 98 was not awarded the work in dispute.

If, however, the Board decides the merits of the dispute, Local 98 contends generally that "[t]he majority of applicable factors" favors an award of the work in dispute to Local 98. Local 98 further asserts that only one factor, employer preference, conclusively favors CWA. However, Local 98 argues that the factor of employer preference is not decisive here because it conflicts with the overall requirement, "as per the Center agreement," that all such work be performed by Local 98.[8] Local 98 further contends that while both groups of employees are capable of performing the work in dispute, the record shows that only Local 98-represented employees have been performing this work within the confines of the First Union Center. Local 98 further asserts that while both groups of employees have received training, the record shows that Local 98 electricians receive "vastly superior training."[9]

Finally, Local 98 contends that a broad order is not appropriate because the dispute here does not arise from any attempt to "steal" work from CWA on a citywide basis, but rather is limited to the First Union Center and arises only because of the existence of the agreement between the Center and Local 98. Thus, Local 98 asserts that the dispute here does not involve work that will be a continuing source of controversy. Further, even if an-

[6] The outside contractor was not to touch any of the equipment, but was to provide instructions to the Local 98-represented employees to make sure that the installations were performed correctly.

[7] Walter Butterworth, a senior wireless implementation engineer employed by Sprint, testified that once the equipment was installed, "then Lucent's people came in and did what we call integration . . . which is the downloading of the software[.]" (Tr. 49.) Butterworth further testified that Lucent's employees performed the integration work because only Lucent had the proprietary rights to the computer program that was installed and that no one objected to Lucent's employees performing the integration work because it was considered computer programming rather than electrical work. (Tr. 50.)

[8] DelSpechio testified that Local 98 had an agreement with the First Union Center that covered all electrical work to be performed at the jobsite. However, in response to the hearing officer's question as to whether, under that agreement, the minicell work should have been done by Local 98, DelSpechio responded "Ma'am, I couldn't answer that. I couldn't say like would they do it or wouldn't they do it. All I know is they are the best qualified to do it, in my opinion." (Tr. 125.) No agreement between Local 98 and the First Union Center was entered into evidence.

[9] In support of this assertion, Local 98 relies on the Board's observation in *Electrical Workers Local 98 (Lucent Technologies)*, 324 NLRB at 228, that the record in that case "show[ed] that Local 98 maintains highly respected apprenticeship and electrical journeymen programs."

other work dispute arises in the future between CWA and Local 98 at the First Union Center, Local 98 contends that there is nothing that would indicate that the dispute over the work is so widespread or pervasive as to require a broad order. However, if the Board does find that a broad award is appropriate here, Local 98 contends that there is no justification for granting an award that would include any other employer except Lucent, the only employer involved in this dispute.

D. The Board's Authority to Determine Dispute

Before the Board may determine the dispute pursuant to Section 10(k) of the Act, it must be satisfied that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated and that the parties have not agreed on a method for the voluntary adjustment of the dispute.

The unfair labor practice charge in this proceeding alleges in pertinent part that Local 98 violated Section 8(b)(4)(ii)(D) by threatening Lucent to force it to assign work to members of Local 98 rather than to Lucent's own employees who are members of CWA. Section 8(b)(4)(ii)(D) states in pertinent part that:

> It shall be an unfair labor practice for a labor organization or its agents . . . (ii) to threaten . . . any person engaged in commerce or in an industry affecting commerce, where . . . an object thereof is: . . . (D) forcing or requiring any employer to assign particular work to employees in a particular labor organization . . . rather than to employees in another labor organization . . . .

Thus, a showing of reasonable cause to believe that Section 8(b)(4)(ii)(D) has been violated requires evidence of a prohibited threat to a person engaged in commerce. As applied in this case, the evidence must establish reasonable cause to believe that DelSpechio threatened that Local 98 would put up a picket line if its members were not given the minicell installation work, and that this threat was communicated to a person engaged in commerce, here First Union Center Building Manager Chu.

As set out above, the evidence establishes that on June 13 CWA Representative Davis met with First Union Center Building Manager Chu and Local 98 Business Agent DelSpechio. Davis testified that DelSpechio stated that Local 98 would put up a picket line if the Charging Party proceeded to install the minicells. Although DelSpechio denied making such a statement, as the Board explained in *Theatrical Protective Union Local 1*, 255 NLRB 955, 957 (1981) (footnote omitted), "[t]he Board is not charged with finding that a violation did in fact occur, but only that reasonable cause exists for finding such a violation. A conflict in testimony does not prevent the Board from proceeding with a determination of the dispute under Section 10(k) of the Act." Davis' testimony provides reasonable cause to believe that DelSpechio threatened that Local 98 would put up a picket line if its members were not given the minicell installation work. Furthermore, although the evidence does not conclusively prove that Chu was present during the entire meeting and that he heard everything said by DelSpechio, the evidence is sufficient to establish reasonable cause to believe that Chu heard DelSpechio's threat. Accordingly, without needing to resolve with certainty either the conflict in the testimony of Davis and DelSpechio or the question of whether Chu heard DelSpechio's alleged threat, we find that there is reasonable cause to believe that a violation of Section 8(b)(4)(ii)(D) has occurred. Finally, the parties stipulated that there is no voluntary method of adjustment of the work dispute that would be binding on all the parties.

Having found that there is reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred and that there exists no agreed-on method for the voluntary adjust of the dispute within the meaning of Section 10(k) of the Act, we conclude that the dispute is properly before the Board for determination.

E. Decision and Analysis

The grant of authority in Section 10(k) for the Board to "hear and determine" jurisdictional disputes requires the Board to make an affirmative award of the disputed work to one of the groups of employees involved in the dispute. *NLRB v. Electrical Workers Local 1212 (Columbia Broadcasting)*, 364 U.S. 573 (1961). While the Act does not set out the standards the Board is to apply in making this determination, the Supreme Court explained that "[e]xperience and common sense will supply the grounds for the performance of this job which Congress has assigned the Board." *NLRB v. Electrical Workers*, 364 U.S. at 583. Consistent with the Court's opinion, the Board announced in *Machinists Lodge 1743 (J. A. Jones Construction)*, 135 NLRB 1402, 1410–1411 (1962), that in making the determination that the Supreme Court found was required by Section 10(k), it would consider "all relevant factors," and that its determination in a jurisdictional dispute would be an act of judgment based on common sense and experience, reached by balancing the factors involved in a particular case.

We have considered the following factors, which we find relevant in the context of the current dispute and, for the reasons set forth more fully below, we conclude that the employees represented by CWA are entitled to perform the work in dispute. In making this determination, we emphasize that we are awarding the work to employees represented by CWA, not to that union or its members.

1. Certifications and collective-bargaining agreements

The Employer and CWA have an existing collective-bargaining agreement covering the installation of the minicells in dispute. Local 98 does not have a collective-bargaining agreement with the Employer. Accordingly, since the collective-bargaining agreement between the Employer and CWA specifically covers the work in dispute, this factor favors an award of the disputed work to employees represented by CWA.

2. Company preference and past practice

During the calendar year preceding the hearing, the Employer performed approximately 100 minicell installations on jobs in the Philadelphia area. On each of these jobs, the Employer assigned the minicell installation work to its own installers. The Employer also used its own installers to perform similar minicell installations at the First Union Center for Verizon Cellular and Comcast Cellular at about the same time as that of the Sprint installations.[10] During this same time period, the Employer installed equipment for Sprint on 177 jobs, and, in the five years prior to the hearing, the Employer installed equipment for Sprint on 458 jobs.[11] During the past 15 years, the Employer has assigned all of its installation work to its own installer employees. There is no evidence that employees represented by Local 98 have performed a comparable amount of the work in dispute.

The Employer prefers to assign the work in dispute to employees represented by CWA consistent with the longstanding practice of assigning such work to those employees. Accordingly, we find that this factor favors an award of the disputed work to employees represented by CWA.

3. Relative skills

The Employer's installers receive training that covers the installation of the Employer's equipment. The Employer also has a commitment with CWA to provide each employee approximately 40 hours of formal training each year. There is no evidence that employees represented by Local 98 possess comparable skills or training to perform the work in dispute.[12] This factor favors an award of the work in dispute to employees represented by CWA.

4. Economy and efficiency of operations

The evidence establishes that the Employer's own employees represented by CWA are familiar with the work in dispute and that this work requires particularized training. There is no evidence that assignment of the work to employees represented by Local 98 would be as economical and efficient. Further, the services of the Employer's CWA-represented employees could not be dispensed with, even if the work in dispute were awarded to IBEW Local 98-represented employees. In this regard, the evidence establishes that the Employer's employees represented by CWA had to come to the First Union Center to perform "integration" work (i.e., the downloading of software) once the minicell system had been installed because, as explained at footnote 7 above, the Employer's own employees are required to perform the integration work. Thus, the fact that the Employer's own CWA-represented employees could do all the work involved in the installation of the equipment represents yet another reason why it would be economical and efficient to award the work in dispute to the Employer's CWA-represented employees. Accordingly, this factor favors an award of the disputed work to employees represented by CWA.

Conclusion

For the foregoing reasons, we conclude that employees represented by CWA are entitled to perform the work in

[10] Thus, contrary to Local 98's assertion in its posthearing brief that only Local 98-represented employees had performed the work in dispute at the First Union Center jobsite, the Employer's own CWA-represented employees have performed the work in dispute at the Center.

[11] Butterworth testified that the Employer had performed the 458 jobs for Sprint over the last 5 years. (Tr. 39.) While Scott Heim, a Lucent operations supervisor, testified generally that Lucent had done approximately 500 installations for Sprint over the last 4 years (Tr. 24), we rely on Butterworth's specific testimony to find that Lucent had performed 458 installations. Since Butterworth further testified with specificity that Lucent had performed those installations over the last 5 years, we rely on his specific testimony in this regard to find that the installations took place over a 5-year period.

[12] As noted above at fn. 9 and accompanying text, Local 98 relies on certain language in *Electrical Workers Local 98 (Lucent Technologies)*, 324 NLRB at 228, to contend in its posthearing brief that Local 98 electricians receive "vastly superior training" to that of the Employer's CWA-represented employees. Contrary to Local 98's assertion, we find that the language relied on by Local 98, taken in context, does not support and, indeed, undercuts Local 98's assertion that Local 98-represented employees receive "vastly superior training" as to the work in dispute. The Board stated in *Electrical Workers Local 98 (Lucent Technologies)*, 324 NLRB at 228 (emphasis added):

> The record also shows that Local 98 maintains highly respected apprenticeship and electrical journeymen programs. However, as Local 98 Business Manager Dougherty acknowledged, many of Local 98's own courses are specifically designed to handle a specific contractor's work. Dougherty also acknowledged that the nature of the telecommunications field often calls for training designed to handle a specific company program. It is evident, therefore, that the training and work experience furnished by the Employer [Lucent] to its own CWA-represented employees is more specifically designed for the Employer's own . . . jobs. *Accordingly, as their skills and training are adapted toward the Employer's wiring operations to a degree greater than those of employees represented by Local 98, we find that this category favors an award of the work in dispute to the Employer's own employees represented by CWA.*

The record in the present case is not to the contrary.

dispute. We reach this conclusion relying on the factors of collective-bargaining agreements, company preference and past practice, relative skills, and economy and efficiency of operations.

F. Scope of the Award

The Employer and CWA seek a broad award applicable to all minicell installation work performed by the Employer within all geographical areas in which the jurisdiction of CWA and Local 98 coincide. They note that the Board has previously found that a broad award was warranted in similar 10(k) proceedings involving the same parties and contend that Local 98 has continued to demonstrate a proclivity to engage in the kind of conduct giving rise to the present proceeding. When a union demonstrates a proclivity to engage in unlawful conduct and there is an indication that the dispute regarding an employer's work is likely to recur, the Board will issue an award broad enough to encompass the geographical area in which an employer does business and in which the jurisdictions of the competing unions coincide. *Plumbers Local 155 (Allied/Hussman)*, 222 NLRB 796 (1976).

In *Electrical Workers Local 98 (Lucent Technologies)*, 324 NLRB 226 (1997), and *Electrical Workers Local 98 (Lucent Technologies)*, 324 NLRB 230 (1997), parallel 10(k) proceedings, the Board found that reasonable cause existed to believe that Local 98 violated Section 8(b)(4)(D) with regard to disputes between Local 98 and CWA concerning, respectively, the Employer's installation of telecommunications wiring and its installation of telephone switching systems. In both those proceedings, Local 98 claimed the work in dispute and then engaged in picketing to prevent the Employer's CWA-represented employees from performing that work. Although the work in dispute in those cases is not identical to the work in dispute here, they demonstrate a proclivity on the part of Local 98 to engage in unlawful conduct in order to obtain work in dispute performed by the Employer. The cases also demonstrate that there is a continuing controversy between Local 98 and CWA regarding the Employer's installation of various forms of telecommunications equipment. In these circumstances, which show a likelihood of recurring disputes and a proclivity to engage in unlawful conduct, we find it appropriate to make a determination covering assignment of the work in dispute in the geographical area in which the Employer does business and in which the geographical jurisdictions of Local 98 and CWA coincide.[13]

DETERMINATION OF DISPUTE

The National Labor Relations Board makes the following Determination of Dispute.

1. Employees of Lucent Technologies, Inc., represented by the Communications Workers of America, AFL–CIO, are entitled to perform the work of installing PCS CDMA minicell equipment and related wiring installed by Lucent Technologies, Inc., wherever the geographical jurisdiction of International Brotherhood of Electrical Workers, Local Union No. 98 and Communications Workers of America, AFL–CIO, coincide.

2. International Brotherhood of Electrical Workers, Local Union No. 98 is not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force or require Lucent Technologies, Inc., to assign the disputed work to employees represented by it.

3. Within 10 days from this date, International Brotherhood of Electrical Workers, Local Union No. 98, shall notify the Regional Director for Region 4 in writing whether it will refrain from forcing Lucent Technologies, Inc., by means proscribed by Section 8(b)(4)(D), to assign the disputed work in a manner inconsistent with this determination.

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[13] As noted above, CWA contends in its posthearing brief that the Board should award to CWA-represented employees all disputed work where the geographical jurisdiction of CWA and Local 98 overlap "and all similar work in that area of geographical overlap, whether Lucent be the employer or some other entity." We find this contention without merit. As the Board stated in *Plumbers Local 345*, 210 NLRB 22, 25 (1974) (fn. omitted):

> The Board has previously held that it will not restrict the scope of its determination to a specific jobsite if there is evidence that similar disputes may occur in the future. However, to issue an order involving other employers who have not been served or been given notice of this 10(k) proceeding and who have not had an opportunity to participate or give evidence is, in these circumstances, in our view inadvisable.